

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF BISBEE

THIS AGREEMENT is entered into 9th day of August, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF BISBEE, acting by and through its MAYOR and CITY COUNCIL (the "City").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, the twelve eligible transportation enhancements provision of safety and educational activities for pedestrians and bicyclists.

4. The City has selected such project within the boundary of the City; the survey of the project has been completed; and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

5. The State and the City wish to participate in the design, construction, and maintenance of a 5 foot wide concrete sidewalk, replace the existing chain link fence with a new chain link fence and construct a retaining wall to support the sidewalk from the entrance of Old Copper Queen Mine to Lavender Pit pullout, MP 341.51- 342.77, hereinafter referred to as the "Project". The parties agree that the Project is contingent upon acquiring easements from Phelps Dodge, the owners of the subject property, prior to advertisement of the Project. The State will construct and the City will maintain the sidewalk, new fence and retaining wall upon completion of the Project.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

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NO. 27004  
Filed with the Secretary of State  
Date Filed: 08/09/04  
Janice K. Brewer  
Secretary of State

By: Dan D. Graesswald

**II. SCOPE OF WORK**

## 1. The State will:

a. Agree to be the City's authorized agent for the acquisition of federal funds and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding.

b. Construct the Project approved by FHWA, if such funds are available for construction. Enter into a Project Agreement with FHWA on behalf of the City covering the work embraced in said construction contract and request the authorized federal funds available including design, construction engineering and administration costs. Proceed to advertise for, receive and open bids with the aid and consent of the FHWA. Enter into a contract(s) with a firm(s) to whom the award is made with the concurrence of the FHWA. Enter into said Project Agreement with FHWA on behalf of the City to perform, complete, accept and pay for in accordance with instructions and requirements of the City and the Arizona Department of Transportation. Request the maximum federal funds available for the Project.

c. Prepare plans, specifications and an estimate for the Project and submit them to the City for concurrence. After the City concurs with the plans, the Project will be constructed by the State, using State and Federal Funds.

d. Obtain the necessary easements for the construction of the Project and hereby certifies that all required easements have been or will be acquired prior to advertisement.

## 2. The City will:

a. Upon completion, approve and accept the Project, provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance and repairs including but not limited to; the 5-ft wide concrete sidewalk, new chain link fence, and all components of the new retaining wall, at City's expense.

b. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of work requested by the City. Such changes require the prior approval of the State.

c. Be responsible for any design consultant and contractor claims for extra compensation due to delays or whatever reason solely attributable to the City.

d. Install an ADOT-provided plaque identifying the Project as part of the Transportation Enhancement Program.

**III. MISCELLANEOUS PROVISIONS**

1. This agreement shall remain in force and effect until completion of said Project and reimbursements; provided, however, that this agreement, except any provisions for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a Project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the City terminates this agreement, the State shall in no way be obligated to maintain said Project.

2. This agreement is contingent upon obtaining all required easements from Phelps Dodge prior to advertisement of the Project.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State and City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and City at the end of the period for which the funds are available. No liability shall accrue to the State and City in the event this provision is exercised, and the State and City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

City of Bisbee  
City Manager  
118 Arizona Street  
Bisbee, AZ 85603

10. Pursuant to Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**CITY OF BISBEE**


**STATE OF ARIZONA**

Department of Transportation

By   
DAN BEAUCHAMP  
Mayor

By   
SUSAN TELLEZ  
Contract Administrator

ATTEST

By   
HELEN I. LEHR  
City Clerk

G:02-078-Bisbee-TEA-US 80 Sidewalk  
19Feb 2004 ly

3. Discussion and Possible Approval of an Intergovernmental Agreement (IGA) Between the State of Arizona Department of Transportation (ADOT) and the City of Bisbee to Construct a Five (5) Foot Concrete Sidewalk Along Highway 80 from the Queen Mine Tour Entrance to the Lavender Pit Pullout.  
Donna Harris, Community Development Director  
(Tabled at the Meetings of May 4, 2004 and May 18, 2004.)

Ms. Harris briefly reviewed the history of the IGA regarding the construction of the fence along Highway 80 from the Queen Mine Tour entrance to the Lavender Pit pullout. She said that the city would be responsible for the ongoing maintenance of the components of the project, specifically the sidewalk, fence and retaining wall. Ms. Harris stated that, in April of 2002, the Council voted to maintain the fence along Highway 80 from the Queen Mine to Lowell. Since that time, ADOT has conducted geotech surveys at Highway 80 and Lowell and discovered stability concerns around Highway 80. Due to these concerns, the project has been shortened from the Queen Mine Tour to the Lavender Pit. The sidewalk will be on the south side of the highway and will replace the existing narrow curve, said Ms. Harris, and the roadways will remain exactly the same. She explained in detail the project and the costs, adding that no city money would be used for this project. Ms. Harris said that the city would still have to maintain the fence, but now would have to also maintain the sidewalk and the retaining wall. Ms. Harris said that, according to a structural engineer, the sidewalk and retaining wall are designed to be relatively maintenance free. She said that the fence will now be farther away from the road. Ms. Harris said that Mr. Grask has reviewed and approved the form of the IGA with ADOT. The project will take approximately 28 months.

Councilmember Giacomino questioned whether or not anyone had considered the minerals in the ground that contributed to the deterioration of the fence. Ms. Harris answered that ADOT is certainly aware of this possibility, and take this into consideration. Councilmember Giacomino asked if the city was still liable for the fence and also the retaining wall. Ms. Harris answered "yes" and said that the new retaining wall would be a smaller section, shorter than the existing retaining wall and in a different location. Councilmember Giacomino also asked if the sidewalk on the north side of the highway would remain. Ms. Harris answered "yes." Councilmember Giacomino asked if the city was also responsible for the existing wall and Ms. Harris answered "yes."

Councilmember Nelson questioned who "owned" the project. Ms. Harris answered that ADOT would own the project but that the city was being asked to maintain the components of the project. Councilmember Nelson asked the length of time of the city's obligation and Ms. Harris answered "in perpetuity." He also asked if ADOT was planning to install new street lights. Ms. Harris said that ADOT would replace the existing street lights but no new lights were planned.

Councilmember Nelson said that the documents before the Council state that the fence would be placed on top of the retaining wall and inquired if it would be done only in the new section. Ms. Harris said that the design has changed a number of times and that the city could certainly make this recommendation if it so desired.

Councilmember White stated that, as a transportation enhancement project, it was his understanding that the state routinely requires that a city maintain such a project. He inquired whether or not the city was being "singled out" to maintain the project. Ms. Harris answered that it is typical for the state to request that the city maintain the components of a project within its jurisdiction.

ATTEST/CERTIFICATION  
I hereby certify that the foregoing documents is/are a true and correct copy.

Dated: 7/21/04  
City Clerk: [Signature]

Councilmember Porter asked who owned and maintained the sidewalk on the north side of the highway. Ms. Harris said that the state owned the sidewalk. Councilmember Porter commented that the sidewalk was poorly maintained. He also asked if the fence was "Phelps Dodge fence." Ms. Harris said that the fence would now be maintained by the city and be "City of Bisbee fence." Councilmember Porter also inquired about the ability of the Public Works Department to repair the fence in a timely manner. Mr. Yandow said that, if the fence needed repair, a fence company would be called and the fence would be repaired as quickly as possible and most of the cost would be recovered from the insurance company.

Councilmember Kasun commented that there aren't any street lights on this section of highway.

Councilmember Nelson commented on his experience that "there is no free lunch." He said that the city had the opportunity to gain an asset of over a half a million dollars with the obligation, if accepted, to maintain it. He said that, even if it would cost the city \$10,000 a year to maintain this area, it would be fifty years until the total cost of the sidewalk would be realized. He said that, even more importantly, the city needed to look at the gain in public safety that would be realized with a sidewalk on the south side of the highway. Council-member White agreed with Councilmember Nelson concerning the public safety gains of the new sidewalk.

Councilmember Porter stated that staff had alleviated his concerns regarding the sidewalk and that he would support the building of a sidewalk on the south side of Highway 80.

Mayor Beauchamp commented on his wish that ADOT would eliminate one lane of traffic and put in a sidewalk without the additional structural needs.

Councilmember Giacomino stated that the original plans were for a sidewalk that would extend to Lowell and, now that the plans have changed, she could not support the construction of a sidewalk on the south side of the highway when one already exists on the north side.

**MOTION:** Councilmember White moved to approve the intergovernmental agreement between the City of Bisbee and the State of Arizona to construct a five foot concrete sidewalk along Highway 80 from the Queen Mine Tour entrance to the Lavender Pit pullout. **SECOND:** Councilmember Nelson

Mayor Beauchamp asked for a show of hands vote.

**VOTE:** AYES: 6      NAYS: 1 (Councilmember Giacomino) **MOTION PASSED:** 6-1

Mayor Beauchamp recessed the meeting at 8:07 PM.

Mayor Beauchamp reconvened the meeting at 8:15 PM.

#### **NEW BUSINESS**

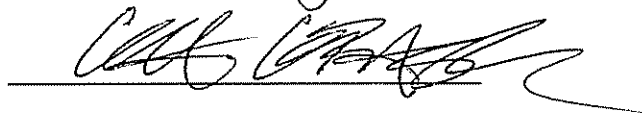
4. Discussion and Possible Approval of the Acceptance of an Offer of \$48,000  
For the HUD \$1 Home Located at 23 Mason Addition.  
Robert G. Yandow, City Manager

This agenda item was considered earlier in the meeting.

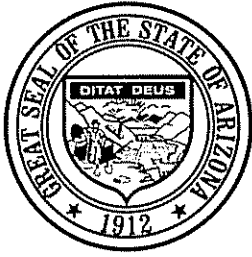
APPROVAL OF THE CITY OF BISBEE ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF BISBEE and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 28<sup>th</sup> day of June, 2004.



Attorney



**ATTORNEY GENERAL  
CIVIL DIVISION  
TRANSPORTATION SECTION**

**MEMORANDUM**

Jeffrey T. Murray  
Assistant Attorney General

Direct: (602) 542-8859  
Fax: (602) 542-3646


**INTERGOVERNMENTAL AGREEMENT  
DETERMINATION**

A.G. Contract No. KR02-1210TRN (**JPA 02-78**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED July 30, 2004.

TERRY GODDARD  
Attorney General

  
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JEFFREY T. MURRAY  
Assistant Attorney General  
Transportation Section